

§ 143-49. Powers and duties of Secretary.

The Secretary of Administration has the power and authority, and it is the Secretary's duty, subject to the provisions of this Article:

- (1) To canvass sources of supply, including sources of goods with recycled content, and to purchase or to contract for the purchase, lease and lease-purchase of all goods required by the State government, or any of its departments, institutions or agencies under competitive bidding or other suitable means authorized by the Secretary including, without limitation, negotiations, reverse auctions, a best value procurement method such as that defined in G.S. 143-135.9(a)(1), and the solicitation, offer, and acceptance of electronic bids. For purposes of this Article, the term "goods" includes, without limitation, all commodities, supplies, materials, equipment, and other tangible personal property.
- (2) To establish and enforce specifications which shall apply to all goods and services to be purchased or leased for the use of the State government or any of its departments, institutions or agencies.
- (3) To purchase or to contract for, by sealed, competitive bidding or other suitable means authorized by the Secretary including, without limitation, negotiations, reverse auctions, a best value procurement method such as that defined in G.S. 143-135.9(a)(1), and the solicitation, offer, and acceptance of electronic bids, all services of the State government, or any of its departments, institutions, or agencies; or to authorize any department, institution or agency to purchase or contract for such services.
- (3a) To notify the Attorney General of pending contracts for contractual services exceeding a cost of five million dollars (\$5,000,000) and that are not otherwise excepted by this subdivision. Upon notification, the Attorney General shall assign a representative from within the office of the Attorney General, the Contract Management Section of the Division of Purchase and Contract, Department of Administration, or other qualified counsel to assist in negotiation for the award of the contract. It is the duty of the representative to assist and advise in obtaining the most favorable contract for the State, to evaluate all proposals available from prospective contractors for that purpose, to interpret proposed contract terms and to advise the Secretary or his representatives of the liabilities of the State and validity of the contract to be awarded. An attorney from within the office of the Attorney General shall review all contracts and drafts of contracts, and the office shall retain copies for a period of three years following the termination of the contracts. The term "contractual services" as used in this subsection and G.S. 143-52.2 means work performed by an independent contractor requiring specialized knowledge, experience, expertise or similar capabilities wherein the service rendered does not consist primarily of acquisition by this State of equipment or materials and the rental of equipment, materials and supplies. This subdivision does not apply to contracts entered into or to be entered into as a result of a competitive bidding process. In order to be valid, any contract for services reviewed pursuant to this subdivision must include the signature and title of the attorney designated from within the office of the Attorney General to review the contract. If the contract commences without the required signature, the State has the right to terminate the contract, and the other party or parties to the contract shall only be entitled to the value of all services provided to the State prior to the termination. The Secretary is not required to

notify the Attorney General for the appointment of a representative for any contracts for contractual services to be entered into by the constituent institutions of The University of North Carolina pursuant to G.S. 114-8.3(b), or for contracts to be entered into by the Department of Treasurer pursuant to G.S. 114-8.3(b1), unless requested to do so by the General Counsel of The University of North Carolina or the General Counsel of the Department of State Treasurer, respectively.

- (4) To have general supervision of all storerooms and stores operated by the State government, or any of its departments, institutions or agencies and to have supervision of inventories of all tangible personal property belonging to the State government, or any of its departments, institutions or agencies. The duties imposed by this subdivision shall not relieve any department, institution or agency of the State government from accountability for equipment, materials, supplies and tangible personal property under its control.
- (5) To make provision for or to contract for all State printing, including all printing, binding, paper stock, recycled paper stock, supplies, and supplies with recycled content, or materials in connection with the same.
- (6) To make available to nonprofit corporations operating charitable hospitals, to local nonprofit community sheltered workshops or centers that meet standards established by the Division of Vocational Rehabilitation of the Department of Health and Human Services, to private nonprofit agencies licensed or approved by the Department of Health and Human Services as child placing agencies, residential child-care facilities, private nonprofit rural, community, and migrant health centers designated by the Office of Rural Health and Resource Development, to private higher education institutions that are described as nonprofit postsecondary educational institutions in G.S. 116-280 and to counties, cities, towns, local school administrative units, governmental entities and other subdivisions of the State and public agencies thereof in the expenditure of public funds, the services of the Department of Administration in the purchase of goods and services under such rules, regulations and procedures as the Secretary of Administration may adopt. In adopting rules and regulations any or all provisions of this Article may be made applicable to such purchases and contracts made through the Department of Administration, and in addition the rules and regulations shall contain a requirement that payment for all such purchases be made in accordance with the terms of the contract.
- (7) To evaluate the nonprofit qualifications and capabilities of qualified work centers to manufacture commodities or perform services.
- (8) To establish and maintain a procurement card program for use by State agencies, community colleges, and nonexempted constituent institutions of The University of North Carolina. The Secretary of Administration may adopt temporary rules for the implementation and operation of the program in accordance with the payment policies of the State Controller, after consultation with the Department of Information Technology. These rules would include the establishment of appropriate order limits that leverage the cost savings and efficiencies of the procurement card program in conjunction with the fullest possible use of the North Carolina E-Procurement Service. Prior to implementing the program, the Secretary shall consult with the State Controller, the UNC System Office, the Community Colleges System Office, the State Auditor, the Department of Public Instruction, a representative

chosen by the local school administrative units, and the Department of Information Technology. The Secretary may periodically adjust the order limit authorized in this section after consulting with the State Controller, the UNC System Office, the Community Colleges System Office, the Department of Public Instruction, and the Department of Information Technology.

- (9) To include a standard clause in all contracts awarded by the State and departments, agencies, and institutions of the State, providing that the State Auditor and internal auditors of the affected department, agency, or institution may audit the records of the contractor during and after the term of the contract to verify accounts and data affecting fees or performance.
- (10) To monitor and enforce the terms and conditions of statewide term contracts. The Secretary of Administration shall not delegate the power and authority granted under this subdivision to any other department, agency, or institution of the State.
- (11) To develop rules, regulations, and procedures specifying the manner in which departments, agencies, and institutions of the State shall monitor and enforce agency term and non-term contracts.
- (12) To consult with the Attorney General or the Attorney General's designee in developing rules, regulations, and procedures providing for the orderly and efficient submission of proposed contracts to the Attorney General for review as provided in G.S. 114-8.3 and G.S. 143-52.2.
- (13) Repealed by Session Laws 2013-234, s. 2, effective October 1, 2013, and applicable to contracts entered into on or after that date.
- (14) To work in conjunction with the Office of State Human Resources to create a Contracting Specialist career path to provide for the designation of one or more employees within each department, agency, or institution of the State to serve as the Contracting Specialist for the department, agency, or institution. Employees on the Contracting Specialist career path shall receive training and guidance as to the provisions of this Article.
- (15) To work in conjunction with the Office of State Human Resources, the Division of Purchase and Contract, and the University of North Carolina School of Government to develop a rigorous contract management training and certification program for State employees. Certification in the contract management training program is mandatory for all State employees who are responsible for awarding contracts or monitoring contract compliance. The program shall be administered by the Office of State Human Resources.
- (16) To work in conjunction with the University of North Carolina School of Government to study and recommend improvements to State procurement laws, including the feasibility of adopting the provisions of the American Bar Association Model Procurement Code. The recommendations shall be reported by the Secretary to the Joint Legislative Commission on Governmental Operations and the Program Evaluation Division by June 30, 2014.
- (17) To establish procedures to permit State government, or any of its departments, institutions, or agencies, to join with any federal, State, or local government agency, entity, or subdivision, or any nonprofit organization in cooperative purchasing plans, projects, arrangements, or agreements if the interest of the State would be served thereby. (1931, c. 261, s. 2; 1951, c. 3, s. 1; c. 1127, s. 1; 1957, c. 269, s. 3; 1961, c. 310; 1971, c. 587, s. 1; 1975, c. 580; c. 879, s. 46; 1977, c. 733; 1979, c. 759, s. 1; 1983, c. 717, ss. 60, 62; 1985 (Reg. Sess.,

1986), c. 955, ss. 79-82; 1989, c. 408; 1991, c. 358, s. 1; 1993, c. 256, s. 1; 1995, c. 265, ss. 1, 5; 1996, 2nd Ex. Sess., c. 18, s. 24.17; 1997-443, s. 11A.118(a); 1999-20, s. 1; 2000-67, s. 10.9(a); 2001-424, s. 15.6(a); 2001-424, s. 15.6(d); 2001-513, s. 28(b); 2003-147, s. 8; 2004-203, s. 72(b); 2005-213, s. 2; 2006-203, s. 82; 2010-194, s. 21; 2011-145, s. 9.18(h); 2011-326, s. 15(w); 2011-338, s. 1; 2013-234, s. 2; 2013-382, s. 9.1(c); 2015-241, s. 7A.4(p); 2017-102, s. 42.1; 2018-5, s. 31.1(a); 2018-12, s. 16.)